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APPLICATION NO.	FILING DATE		FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
2152	

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/928,347	PESTONI ET AL.
	Examiner	Art Unit
	Carolyn F. Fleary	2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>08 March 2005</u>.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-23</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-23</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Oth

Remarks

This action is in response to the Applicant's Amendment dated March 8th 2005.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

   The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 9 recites the limitation "the collaborative preference s of the allocated channel" in line 5. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 22 recites the limitation "said model" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

   (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1 – 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noll et al. (US 2002/0054087) in view of Hosken (US 6,438,579)

In regards to claim 1, Noll et al. discloses a method of optimizing bandwidth allocation based on selective filtering [0066], distribution of content and allocation of users to said distributed content, one or more steps of said method performed over a network (abstract, [0039]), said method comprising:

- Dynamically allocating said bandwidth to a plurality of communication channels (124), each of said channels retaining one or more instances of content ([0041], [0057] [0066]);

- recursively receiving user preferences of content information from a user [0007] [0058-0059][0063], said preferences comprising one or more of: selection requests for specific content, evaluations of existing content, and evaluations of potential content ([0058][0063]);

- dynamically retaining within a selected channel a collection of specific instances of content based on an a collation of said preferences ([0066] [0063]), said collection placed on an allocated communication channel ([0041]] over a period of time; ([0068] [0078-0079])

- dynamically allocating user access to-channels based on a best match with said preferences ([0039][0044] [0081-0083] [0085]).

Noll does not explicitly state receiving user content preferences from "multiple users". However Noll indicates a need to personalize content for multiple users ([0005]) Hosken et al. teaches a collaborative filtering system for recommending content to users based on comparison between the user and other users preferences of content and between content databases that store rating data for content provided by users (abstract

lines 1-8). The preferences (recommendations) are tailored to personalized interests through steps which include presenting content to a user for review and consideration of potential interest, monitoring the consideration of the content items implied through the user directed navigation among existing content and specific user content request (col 2 lines 36-44). The collected preference data is used to develop a user weighted data set reflective of the user's relative consideration of the content; and evaluation of the user weighted data set in combination with the content filter to identify a set of content for presenting to a user (col. 2 lines 44-50). One of ordinary skill in the art at the time of invention would have realized that it is advantageous for the system of Noll et al. to have content information comprising collation of preferences from multiple users in order to increase the efficient of the system providing recommendations that the users will enjoy and appreciate; as well as being consistent with a users personal interests (col. 1 lines 31-41, 23-27).

In regards to claim 2, Noll et al. discloses a method of optimizing bandwidth allocation based on selective filtering, distribution of content and allocation of users to said distributed content, as per claim 1,

Noll et al. fail to teach:

- wherein said evaluations of existing and potential content represent user preferences based on voting for or against the content.

Hosken further teaches a users ability to provide ratings (i.e. votes) regarding the content recommendations indicating the degree to which the user preferred the recommended content. Ratings constitute stored implicit and explicit ratings of data content provided by the user (abstract lines 6-8). Similarities between the user rating of content, existing content, and other users' ratings are correlated (abstract lines 11-13). Based on the

correlations, a subset of users is selected that are then used to provide recommendations of content to the use (abstract lines 14-17). Content is presented to a user for review and consideration (abstract lines 17-20). Hosken continues to teach user preference based on voting for or against. This process includes recommending content to a users; the user then is able to review and consider the items. Votes for can include user selection of a particular content item and request for additional information, length and nature of consideration of content (col 2 lines 36-50, col 3 lines 21-25). Votes against include user not selecting a recommended content item. Voting can also be derived from polls, rankings and ratings of content (col 9 lines 38-41) This review and consideration (i.e. voting) is monitored by the system to develop weighed data set reflective of the users consideration of content (col 2 lines 36-50, col 6 lines 28-31).

It would have been obvious to one of ordinary skill in the art at time of invention to have the Noll et al.'s system of evaluation based on voting in order to incorporate high confidence information that is incorporated into group and individual collaborative data as well as to develop group and personal interest profiles that produce recommendations that have a high probability of being appreciated by the user (abstract lines 12-17, col 3 lines 20 -33).

In regards to claim 3, Noll et al. discloses a method of optimizing bandwidth allocation based on selective filtering, distribution of content and allocation of users to said distributed content, as per claim 1, wherein said evaluations of potential content (i.e. new content) comprises introduction of new content which, (i.e. new content opportunities), appears to be a high probability match (i.e. match interest of user) and said evaluations (i.e. profile) are used to validate or invalidate said match [0085].

Noll et al. fails to teach wherein said evaluations of potential content comprises introduction of new content which, based upon a comparison with said collection ~~collected content~~, appears to be a high probability match and said evaluations are used to validate or invalidate said match.

Hosken teaches the developments collaborative content data based on evaluations of group and individual interests (col. 3 lines 20-33) that are stored in a database (col. 4 lines 43- 48). The stored data is used to provide recommendations for users (i.e. matching) (col. 4 lines 48-50). User profile content data is also used for modifying (i.e. invalidate) and expanding (i.e. validate) on individualized recommendations (col. 4 lines 50- 55). In this manner, the system provides qualifying information reflecting the strength or weight of content relations (i.e. matching) and may take multiple approaches to generating a recommendation set (i.e. high probability matching) to produce the content set present to the user (col 6 lines 35-46,57-60).

It would have been obvious one of ordinary skill in the art at the time of invention to utilize Hosken's evaluation technique to effectively be capable of providing content recommendations suited to the particular interest of a user. Thus eliminating the lack of confidence, which would reduce the utility of the system, in content recommendations. (col. 1 lines 42-58)

In regards to claim 4, Noll et al. discloses a method of optimizing bandwidth allocation based on selective filtering, distribution of content and allocation of users to said distributed content, as per claim 1,

Noll et al. fails to teach:

- wherein said instances of content comprise selected songs.

Hosken teaches media content, which includes music samples, song tracks (col 4, lines 14-25) that can be selected (col 3 lines 20-22). One of ordinary skill in the art at time of the invention would have been motivated to include in Noll et al. content as comprising of selected songs in order to include a form of media entertainment that is capable of being enjoyed and appreciate which can result in purchase when transmitted to a user (col 1 lines 42- 45, col 2 lines 17-20).

In regards to claim 5, Noll et al. discloses a method of optimizing bandwidth allocation based on selective filtering, distribution of content and allocation of users to said distributed content, as per claim 1, wherein said distribution of content is distributed across the internet to a user ([0091] lines 1-5)

Noll et al. is silent on the distribution of songs.

- wherein said distribution of content comprises distributing selected songs across the internet to a user.

Hosken teaches media content, which includes music samples, song tracks (col 4, lines 14- 25) that can be selected (col 3 lines 20-22). One of ordinary skill in the art at time of the invention would have been motivated to include in Noll et al. content as comprising of selected songs in order to include a form of media entertainment that is capable of being enjoyed and appreciate which can result in purchase when transmitted to a user (col 1 lines 42- 45, col 2 lines 17-20) operating a computer system with a network access supported interface such as a conventional web browser application, to access and navigate applications supporting the presentation of songs that sent from a content storage location (See Hosken col 4, lines 28- 43).

In regards to claim 6, Noll et al. discloses a method of optimizing bandwidth allocation
based on selective filtering, distribution of content and allocation of users to said distributed
content, as per claim 1, wherein said distribution of content comprises distributing selected
songs across the Internet and said communication channels comprise streaming audio
channels. ([0058] lines 3-5 [0060] lines 12-14)

Noll et al. is silent on said distribution of content comprises distributing selected songs:

Hosken teaches media content, which includes music samples, song tracks (col 4,
lines 14- 25) that can be selected (col 3 lines 20-22). One of ordinary skill in the art at time
of the invention would have been motivated to include in Noll et al. content as comprising of
selected songs, that are on the streaming audio packed channels so that the songs are
played back to the user as quickly as possible without lengthy download time, in order to
include a form of media entertainment that is capable of being enjoyed and appreciated by
the user and can result in purchase (col 1 lines 42- 45, col 2 lines 17-20).

In regards to claim 7, Noll et al. discloses a method of optimizing bandwidth allocation
based on selective filtering, distribution of content and allocation of users to said distributed
content, as per claim 1

Noll et al fails to disclose wherein said distribution of content, comprises:

- Distributing selected electronic content to a user from any of: web distribution
centers, cable television systems, and, satellite systems.

Hosken discloses teaches content distributed to requestor from one or more industry
databases, third party databases (col 5 lines 62-66, col 6 lines 1-5); the user having the
ability to access and navigate through the content presented by a server system   via a
computer system with network access supported interface (i.e. web browser) (col 4 lines
32-48).

One of ordinary skill in the art at time of the invention would recognize the advantage of the Noll et al. system utilizing web distribution systems in order to fulfill the content requests (col 6 lines 1-5) of a collaborative system that reflect the choice of users with highly diverse content interests (col 3 lines 5-10).

In regards to claim 8, Noll, discloses a method of optimizing bandwidth allocation based on selective filtering, distribution of content and allocation of users to said distributed content, as per claim I, wherein said distribution of content comprises distributing selected electronic content comprising any of:

- Video ([0054] lines 8-9), software, personal ads, news stories ([0060] lines 12-18) restaurant ratings, evaluating advertisement, and political propositions including matching candidates and issues.

In regards to claim 9, Noll et al. discloses a method of optimizing bandwidth allocation based on selective filtering, distribution of content and allocation of users to said distributed content, as per claim 1, wherein said step of allocating user access to one or more dynamically allocated communication channels comprises

- dynamically providing said access based on a match[0085] of a specific user's collaborative (i.e. implicit & explicit preferences used together to determine channels) preferences ([0044] [0059][0063]) with that of the collaborative preferences (i.e. collaborating includes examining user profiles and content preferences to create categories for a channels) of the allocated channel ([0054 - [0056][0063][0064][0066]).

In regards to claim 10, Noll et al. discloses a method of optimizing bandwidth allocation based on selective filtering, distribution of content and allocation of users to said distributed content, as per claim 1,

- wherein a new user is mapped to and initial content channel by building a new user profile. ([0064] lines 1-5, [0066] lines 3-6, [0079] lines 1-12, [0081] lines 6-19, Claim 1,7)

Noll et al. is silent on:

- building a new user profile comprising the steps of presenting a plurality of content selections to the user and registering positive and negative votes of said content selections

Hosken teaches the explicit and implicit ratings (i.e. votes) from users are stored. The users profile contains the implicit and explicit (Table II & III) content interests of the user. The user profile is used to determine the new content items that are recommended to the user. These recommendations are presented to the user for further exploration. (Abstract, col 2 lines 36-44, col 5 lines 19-26, col 6 lines 5-17). The user navigates the content and may request samples (i.e. votes for/implicit positive rating) (figure 1a, col 5, lines 41-61). Hosken continues to teach user preference based on positive and negative votes. This process includes recommending content to a users; the user then is able to review and consider the items. Positive votes can include user selection of a particular content item and request for additional information, length and nature of consideration of content (col 2 lines 36-50, col 3 lines 21-25). Negative votes include user not selecting a recommended content item. This voting is monitored by the system to develop weighed data set reflective of the users consideration of content (col 2 lines 36-50, col 6 lines 28-31).

It would have been obvious to one of ordinary skill in the art at time of invention to have

the Noll et al.'s system of evaluation based on voting in order to incorporate high confidence

information that is incorporated into group and individual collaborative data as well as to

develop group and personal interest profiles that produce recommendations that have a

high probability of being appreciated by the user (abstract lines 12-17, col 3 lines 20 –33).

i.   In regards to claim 11, Noll et al. discloses a collaborative content programming

system, one or more elements of said system located across networks ([0036]), said

system comprising:

- a content database (Figure 1 #122), said content database retained within one or
  more storage locations across said network (Figure 17, [0054]);

- a content engine Figure 1 #12), said content engine collecting specific instances
  of content retained in said content database into channels (abstract lines 7-10,
  [0007] lines 8-18,[0039] lines 6-16);

- an available channel selector, said selector providing access to said channels to
  content requesters; ([0007] lines 25-30, [0044] lines 7-17, [0076])

- said content engine determining a best match to connect each of said content
  requesters to one or more of said available channels based on specific content
  requests ([0054] lines 15-17, [0056] , [0067-0068], [0077]);

- said content engine aggregating said specific content requests ([0040] lines 5-
  11, [0045]) and requestor evaluations of specific content, and ([0007] line 30-
  32, [0054])

- said content engine dynamically modifying said collected specific instances of
  content retained in said content database into channels based on said
  aggregating ([0054],[0079])

Noll et al is silent on

- said content engine dynamically modifying said collected specific instances of content retained in said content database

Hosken teaches a system, which comprises a server system, which contains content databases that store both Implicit and explicit content processed by the content engine are stored (figure 1A, figure 2) . The content databases contain a content filter for identifying and providing qualifying information for content items in the database, which produce, contain recommendations. Content recommendations are tailored to a user that includes steps of presenting content items via a network to a user for review and consideration (col 2 lines 36-44). Hosken discloses the content engine (figure 2-referral system) that provides content recommendations and combines content data collected from other users, in a collaborative fashion, which is used to modify and expand on individual content recommendations (col 4 lines 43-55).

One of ordinary skill in the art at time of the invention would have clearly recognized that it is advantageous to continue to modify the content retain in the content database in order to refine the user profiles as to the interest of the user and deepening the search for content items that are of particular interest to the user (col 6 lines 33-43, col 13 lines 20-24).

In regards to claim 12, Noll et al. discloses a collaborative content programming system, as per claim 11,

Noll et al. fails to teach:

- wherein said evaluations comprise voting on existing and potential content, said voting representing user preferences.

Refer to claim 2 above discussion on what Hosken teaches.

In regards to claim 13, Noll et al. discloses a collaborative content programming system as

per claim 12

Noll et al. fails to teach wherein said evaluations of potential content comprises:

•introduction of new content which, based upon a comparison with said collected content,

appears to be a high probability match and said evaluations are used to validate or

invalidate said match.

Refer to claim 3 discussions above on what Hosken teaches.

In regards to claim 14 Noll et al. discloses collaborative content programming system, as

per claim 11,

Noll et al. fails to teach:

•wherein said content comprises selected songs.

Refer to claim 4 discussions above on what Hosken teaches.

In regards to claim 15, Noll et al. discloses collaborative content programming system, as

per claim 11, wherein said content is broadcast across the Internet ([0039], [0060] lines

12-21, [0066] lines 1-7).

Noll et al. teaches content is broadcasted on channels over Internet Service Providers,

which provides access to the Internet, to allow for real time distribution of content to users

([0006], [0039]).

In regards to claim 16 Noll et al. discloses a collaborative content programming system, as

per claim 11, wherein said content is broadcast ([0039], [0060] lines 12-21, [0066] lines

1-7)across the Internet and said channels comprise streaming audio channels ([0058] lines

3-5 [0060] lines 12-14)

Noll et al. teaches content is broadcasted on channels over Internet Service Providers, that

provides access to the Internet, from which content is easily distributed users in real time,

presented to the user as quickly as possible without lengthy download time ([0006],

[0039]) and prevents time shifted presentation content transmitted to user computer or

Internet access devices ([0091]).

In regards to claim 17 Noll et al. discloses A collaborative content programming system, as

per claim 11, wherein said content is broadcast ([0039], [0060] lines 12-21, [0066] lines 1-

7) to a requestor from web distribution centers.

Noll et al. is silent on broadcast to requestor from web distribution centers.

Refer to claim 7 discussions above for what Hosken teaches.

In regards to claim 18, Noll et al. discloses collaborative content programming system, as

per claim 11, wherein said content is broadcast across said channels ([0039], [0060] lines

12-21, [0066] lines 1-7)

Noll et al. is silent on broadcast across said channels from any of:

•web distribution centers, cable television systems, and satellite systems.

Refer to claim 17 discussions above on what Hosken teaches.

In regards to claim 19, Noll et al. discloses a collaborative content programming system, as

per claim 11, wherein said content comprises any of:

•Video ([0054] lines 8-9), software, personal ads, news stories ([0060] lines 12-18)

    restaurant ratings, evaluating advertisement, and political propositions including

    matching candidates and issues.

In regards to claim 20, Noll et al. discloses collaborative content programming system, as

per claim 11, wherein said evaluations additionally include request for omissions of specific

content ([0079]).

Noll et al. teaches a system that allows for the removal of undesirable content and also

filters content based on user preferences; allowing only the content of interest to be

presented to the user ([0079]). The system issues commands that activate or deactivate

content which define the composition of the content on the channels ([0068] lines 9-15).

In regards to claim 21, claim 11 as modified above, Noll et al. discloses a collaborative

content programming system, as per claim 11, wherein said content engine comprises at

least data mining algorithms ([0104] [106]).

Noll teaches data mining for use in tracking and gaining information concerning users

personal habits, preferences, and opinions in exchange for credits, which may be redeemed

for content purchases.

In regards to claim 22, Noll et al. discloses an e-commerce system [0110] for collaborative

content programming with electronic access to user modified channels of content (figure 17-

24, [0049] lines 5-10, [0050-53], [0071],) said model comprising:

•a collection of individual content selections, said collection retained within computer

    storage ([0054] lines 15-21) and accessible across computer networks [0039];

- computer software ([0039] lines 14-16, [0048]), said software tracking ([0007] lines 30-

    32) and aggregating both individual user's requests based on specific content selections

    and evaluations of specific selections from said collection said aggregated requests and

    evaluations retained locally or remotely in associated computer storage ([0054]);

- one or more channels, said channels dynamically collecting specific content based on said

    aggregated requests and evaluations, ([0039], [0054] [0081]) said computer software

    assigning a user to a best matching channel ([0048], [0067], [0070]), said channels

    accessible remotely by said user across said networks [0091], and

- revenue collection based on any of: subscription fees, per content fee, advertising, and

    content purchase options. [fig 19, fig 20, [0095-0098] [104])

    Noll et al. fails to explicitly teach matching "users" to a best matching channel or

channels accessible "users". However Noll indicates a need to personalize content for

multiple users ([0005])

Refer to claim 1 rejection for that which Hosken teach.

    In regards to claim 23 Noll et al. discloses, an article of manufacture ([0046] lines 1-4)

    comprising computer readable program code embodied therein ([0046][0047][0053])

    which selective filters [0066] and distributes content based on combined user specific and

    collaborative inputs said computer readable program code comprising:

    - computer readable program code for allocating a communication channel for one or

        more instances of content ([0041], [0057],[0066])

    - computer readable program code for recursively receiving content information from a

        user (pg. 12 -#47-49), said content information comprising one or more of: selection

    requests for specific content, evaluations of existing content, and evaluations of

    potential content ([0058][0063]);

- computer readable program code for collecting specific instances of content based on

    said content information ([0063][0066]), said collection placed on an allocated

    communication channel ([0041]) over a period of time; ([0068] [0078] [0079]) and

- computer readable program code for allocating user access to one or more allocated

    communication channels based on said received content information ([0039] [0042]

    [0044] [0081-0083]).

  Noll et al. does not "explicitly" receiving content information from "multiple users".

However Noll indicates a need to personalize content for multiple users ([0005])

    Hosken explicitly teach receiving content information from "multiple users" (abs).

and using collaborative inputs (col. 3 ll. 5-10) to distribute content. Refer to claim 1

rejection for that which Hosken teach.

Response to Arguments

Applicant's arguments filed March 8th 2005 have been fully considered but they are not persuasive.

1.   In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case the prior art, Noll and Hosken, are considered analogous art since both provide solution to the similar problem solving area of delivering content that are of specific interests to a user. Prior art references considered analogous must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case the analogous nature of the prior art provides the suggestion and motivation to combine.

2.   In response to applicants argument that the applied art fails to teach:

- i.e. "content is dynamically allocated" (pg. 14 ll. 19), "collation of preferences from multiple users" (pg 14 ll. 22)

- "collaboration of both individual and group preferences in a channel" (pg 15 ll. 20-21),

- " allow users with similar preferences to jointly decide what content is included in the channel which they are a part of" (p.16 ll. 1-2, p. 19 ll. ll. 10-11),

- "a collation of preferences from multiple users at one time to allocated the content in a channel and then allocate a user to a particular channel that meets their individual preferences" (pg 17 ll. 21-22, pg 18 ll. 1),

- "a content engine that aggregates specific content requests"(p 18 ll. 2-3) are not recited in the rejected claim(s).

- "there is not group or joint decision making as to the content that is provides" (pg. 21-par 3)

It is noted that the features upon which applicant relies (above) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)

3.   In response to applicants' argument that a) Hosken or Noll does not provide "dynamically allocating said bandwidth to a plurality of channels", b) Noll does not provide "recursively receives user preferences..from multiple users" c) Noll does not "dynamically retaining...a collection of content based on a collation" of preferences ""<u>or</u>" d)Hosken or Noll does not describe "dynamically allocating user access":

a.   It is noted that Noll et al. teaches generating by the NOC (12) a plurality of low bandwidth virtual communication channels (124), each channel providing broadcast content (122) programming information and dynamically generating personalized GUI updates [0042], said virtual channels also provided high-bandwidth services providing high bandwidth content, specifically, generating

.(multicast streams) over said virtual communication channels (124) providing high bandwidth services to a plurality of user machines(18) based on multiple criteria thereof [see Para 0057].

Hence, because the reference teaches the generation of virtual channels having different bandwidths for providing content requiring different bandwidth, it teaches dynamically allocating bandwidth to a plurality of communication channels, each channel providing one instance of content as claimed.

Further, Noll et al. teaches claim (1) intended user (not limiting the structure of the claim see MPEP 2111.02, thereby not having patentable weight), e.g. optimizing bandwidth allocation based on the distribution of content by dynamically scheduling the content on respective virtual channels (12) based on the bandwidth necessary to receive content [066], this is making efficient use or optimizing bandwidth allocation.

b.   It is noted that the Noll et al. system service many users. Noll discloses the need to personalize content for multiple users ([0005] ll. 3-9 i.e. consumer PCs and Internet devices) and to dynamically link multiple users (i.e. individual clients) to channels of specific interest ([0006] ll. 10-13). Noll discloses delivering multicast stream virtual channels to user machines based on user feedback [0044 ll. 10-17). Noll explicitly discloses in [0058- 0059] the collection of feed back from a client and delivering virtual channels based on user feedback. It is obvious to one of ordinary skill in the networking art that the process (i.e. collecting feedback, allocating channels, distributing content) disclosed in Noll et al. system services many users that utilize the system (Also see [0011] [0063] ll. 3-6 and claims 47-50).

c.   Noll does not provide for dynamically retention of content based on a collation of preferences. First, collation is the act or process of examining or comparing

carefully to note points of disagreement (American Heritage College Dictionary, 2002,281). By this definition Noll et al. is collating preferences of a user. Noll discloses a system for delivering _personalized_ content wherein the system keeps track of user feedback ([0007] II. 31-34) and delivers virtual channels of content based on user feedback ([0039] II. 6-12), predetermined criteria (i.e. personal profile) or content selected by a user ([0058]). Content is targeted to user based on collation of personal profile, feedback or other criteria ([0063] II. 1-6 i.e. content examined and filtered to user according to feedback etc.). Noll further discloses that content on a virtual channel is dynamically updated (i.e. collection of virtual channels of content) to reflect changes in a users' preferences ([0063] II. 13-15 [0068] II. 5-15)

d.   Noll does provide for dynamically allocating user access based on user preference. Noll et al. discloses a dynamic graphical user interface (GUI) on which virtual channels of content are presented to a user[0042]. The system allocates virtual channel (represented by hyperlinks) within the GUI based on preferences (i.e. profile, feedback, criteria etc), which are then selectable, by users [0080-0081].

4.   In response to applicants' argument that Hosken does not provide a collation of preference or dynamic retaining content with a channel, Hosken discloses a system which recommends content to a user based on the similarity in profile between multiple users (abs). In other words, the system does not solely use and individual users profile to recommend content to the individual user but uses the individual profile in addition profiles of other users to recommend content to a the individual user (abs). Using definition above, Hoksen disclose content are tailored to personalized interests through steps which include presenting content to a user for review and consideration of potential interest, monitoring

the consideration of the content items implied through the user directed navigation among

existing content and specific user content request (col. 2 lines 36-44). The collected

preferences data are used to develop and identify (i.e. collation) a data set of content

reflective of the user's relative consideration of the content identify a set of content for

presenting to a user (col. 2 lines 44-50).   Hence in this manner both Noll ([0007] ll. 1-3)

and Hosken (col. 2 ll.23-27) provide the same purpose of delivering content that are of

specific interest to a user and therefore it would have been obvious to combine.

5.   In response to applicants argument that, "Hosken does not describe dynamically

allocating a user access based on user's preferences", Noll teaches preferences (i.e. explicit)

determined when a user selects (i.e. polling) content and preferences (i.e. implicit) which

are determined by the system based on user preferences (feedback, viewing habits etc..).

The system collaboratively (i.e. system utilizing both implicit and explicitly preferences

together) uses said preferences to determine content and channels that users may access

[0058][0059][0063][0064][0066]. Noll et al. further discloses a dynamic graphical user

interface (GUI) on which virtual channels of content are presented to a user [0042]. The

system allocates virtual channel (represented by hyperlinks) within the GUI based on said

preferences, which are then selectable, by users [0079-0081]. Hence, because the

reference teaches using said preferences, to are continuously update a GUI in which to

present channels of content to users, it teaches dynamically allocating user access based on

user's preferences as claimed.

6.   In response to applicants argument "Hosken does not provide the claim element of

aggregating said specific content request and requestor evaluations of specific content", Noll

discloses an NOC (i.e. content engine fig. 1-12 & fig. 4-12) that collects and aggregates

content [0007] ll. 9-10). It is obvious from fig. 1 that the NOC (fig. 1-12) connects users to

virtual channels (fig. 1-14). Noll et al. discloses that transmitting virtual channels comprises

transmitting channels request by a client (i.e. said selection request equates to selection

request for specific of claim 1) or targeted to a user based on a predetermined criteria (i.e.

profile, user feedback etc.[0058] II. 8-13). Noll et al. also discloses evaluations (i.e.

feedback via polls, feedback by way of viewing habits) of content ([0059], [0104] II. 5-8).

Fig. 1 clearly shows in item #127 the communications (request for content and evaluations

of content) sent by the user/client to NOC (12) and will be collected and aggregated. It

would have been obvious to one or ordinary skill in the art to combine Noll ([0007] II. 1-3)

and Hosken (col. 2 II.23-27) as both provide the same purpose of delivering content that

are of specific interest to a user.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as

set forth in 37 CFR 1.136(a).

     A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until

after the end of the THREE-MONTH shortened statutory period, then the shortened statutory

period will expire on the date the advisory action is mailed, and any extension fee pursuant

to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no

event, however, will the statutory period for reply expire later than SIX MONTHS from the

mailing date of this final action.

     Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Carolyn F. Fleary whose telephone number is (571)

5727218. The examiner can normally be reached on 8:30 - 4:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Glenton Burgess can be reached on (571)272-3949. The fax phone number for

the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status information

for unpublished applications is available through Private PAIR only. For more information

about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on

access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-

217-9197 (toll-free).

Carolyn F Fleary
Examiner
Art Unit 2152

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